

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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IRINA RYBITSKAIA,

Plaintiff,

- against -

NEW YORK STATE DEPARTMENT OF
TRANSPORTATION and FRED LIBOVE,

Defendants.

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BLOOM, United States Magistrate Judge:

Plaintiff filed the instant pro se action on May 5, 2009 against the New York State Department of Transportation and Fred Libove. (Document 1.) The Court's records do not reflect that plaintiff has filed proof that defendants New York State Department of Transportation and Fred Libove have been served with the summons and complaint. Rule 4(m) of the Federal Rules of Civil Procedure provides:

If a defendant is not served within 120 days after the complaint is filed, the court--on motion or on its own after notice to the plaintiff--must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

By Order dated May 14, 2009, I directed plaintiff to serve defendants with the summons and complaint by September 2, 2009. (Document 2.) The Court's Order explicitly stated "if service is not made upon defendants by September 2, 2009 or plaintiff fails to show good cause why such service has not been effected, it will be recommended that the Court dismiss this action without prejudice." (Id.) Plaintiff has failed to file proof of service or show good cause why service has not been made on defendants New York State Department of Transportation and Fred Libove. Accordingly, it is respectfully recommended that plaintiff's complaint should be dismissed without prejudice pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.

REPORT & RECOMMENDATION
09-CV-1898 (JBW)(LB)

FILING OF OBJECTIONS TO THIS REPORT AND RECOMMENDATION

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have ten (10) days from service of this Report to file written objections. See also Fed. R. Civ. P. 6. Such objections (and any responses to objections) shall be filed with the Clerk of the Court. Any request for an extension of time to file objections must be made within the ten-day period. Failure to file a timely objection to this Report generally waives any further judicial review. Marcella v. Capital Dist. Physician's Health Plan, Inc., 293 F.3d 42 (2d Cir. 2002); Small v. Sec'y of Health and Human Services, 892 F.2d 15 (2d Cir. 1989); see Thomas v. Arn, 474 U.S. 140 (1985).

/S/

LOIS BLOOM

United States Magistrate Judge

Dated: November 4, 2009
Brooklyn, New York